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AUG 16 2010

OFFICE OF PETITIONS

In re Patent of Konstantinov : DECISION ON REQUEST
Patent No. 7,674,885 : FOR
Issue Date: March 9, 2010 : RECONSIDERATION OF
Application No. 10/532,998 : PATENT TERM ADJUSTMENT
Filed: November 10, 2005 : and
Docket No. 07430-00150-USU : NOTICE OF INTENT TO ISSUE
: CERTIFICATE OF CORRECTION

This is a decision on the petition filed on April 6, 2010, which is being treated as a petition under 37 CFR 1.705(d) requesting that the patent term adjustment indicated on the above-identified patent be corrected to indicate that the term of the above-identified patent is extended or adjusted by eight hundred forty-five (845) days.

The petition to correct the patent term adjustment indicated on the above-identified patent to indicate that the term of the above-identified patent is extended or adjusted by eight hundred forty-five (845) days is **GRANTED to the extent indicated herein**. The patent term adjustment is corrected to indicate that the term of the above-identified patent is extended or adjusted by **eight hundred nine (809)** days.

First, patentees dispute the period of reduction of 364 days for Office delay in mailing at least one of a notification under 35 U.S.C. 132 not later than fourteen months after the date on which the application fulfilled the requirements of 35 U.S.C. 371 in an international application. Patentees contend the period of reduction should be 393 days. Second, patentees assert that the Office failed to properly calculate the B delay period.

First, it is not appropriate to review the 14 month delay period under 1.705(d). As stated in MPEP 2730, 1.703(d) provides that:

If there is a revision to the patent term adjustment indicated in the notice of allowance, the patent will indicate the revised patent term adjustment. If the patent indicates or should have indicated a revised patent term adjustment, any request for reconsideration of the patent term adjustment indicated in the patent must be filed within two months of the date the patent issued and must comply with the requirements of paragraphs (b)(1) and (b)(2) of this section. Any request for reconsideration under this section that raises issues that were raised, or could have been raised, in an application for patent term adjustment under paragraph (b) of this section shall be dismissed as untimely as to those issues.

The 14 month delay period issue should have been timely raised on application for patent term adjustment under § 1.705(b). It is not appropriate to address it under 37 CFR 1.705(d).

Second, the calculation of delay pursuant to 37 CFR 1.702(b) is based on a national stage commencement date of May 2, 2005, not May 1, 2005. As the expiration of the 30-month period pursuant to 35 U.S.C. 371(b) fell on a Sunday, the period expired on the subsequent business day. See PCT Rule 80.5. Accordingly, the commencement date is Monday, May 2, 2005. The over three year period begins on May 3, 2008 and ends on March 9, 2010. As stated in 35 U.S.C. 154(b)(1)(B)(ii), B delay does not include "any time consumed by appellate review by the Board of Patent Appeals and Interferences." Therefore, the appellate period of 6 days (beginning on December 10, 2009, the date a Notice of Appeal was filed, and ending on December 15, 2009, the date the Notice of Allowance and Fee(s) Due was mailed) is excluded from the "B" delay period. Thus, the B delay period is 670 (not 677) days. As such, the patent term adjustment is 809 days (393 A delay + 670 [676 - 6 days excluded] B delay - 225 Applicant delay), not 845 days.

The Office will *sua sponte* issue a certificate of correction. Pursuant to 37 CFR 1.322, the Office will not issue a certificate of correction without first providing assignee or patentee an opportunity to be heard. Accordingly, patentees are given **one (1) month or thirty (30) days**, whichever is longer, from the mail date of this decision to respond. No extensions of time will be granted under § 1.136.

Nothing in this decision shall be construed as a waiver of the requirement of 35 U.S.C. 154(b)(4) that any civil action by an applicant dissatisfied with a determination made by the Director under 35 U.S.C. 154(b)(3) be filed in the United States District Court for the District of Columbia within 180 days after the grant of the patent.

The Office acknowledges the submission of the \$200.00 fee set forth in 37 CFR 1.18(e). This fee is required and will not be refunded. No additional fees are required.

The application is being forwarded to the Certificates of Correction Branch for issuance of a certificate of correction. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by **eight hundred nine (809)** days.

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3230.

Shirene Willis Brantley
Shirene Willis Brantley
Senior Petitions Attorney
Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

UNITED STATES PATENT AND TRADEMARK OFFICE
CERTIFICATE OF CORRECTION

PATENT : 7,674,885 B2

DATED : March 9, 2010

DRAFT

INVENTOR(S) : Konstantinov et al.

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

On the cover page,

[*] Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 U.S.C. 154(b) by 618 days

Delete the phrase "by 618 days" and insert - by 809 days--